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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL ANGEL COLLADO,

Defendant and Appellant.

B209886

(Los Angeles County
Super. Ct. No. NA077790)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur Jean, Jr., Judge. Affirmed.

Roberta Simon, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Manual Angel Collado's sentence was doubled based on a prior juvenile adjudication that the trial court treated as strike. On appeal, defendant contends that the use of his prior juvenile adjudication as a strike violates his right to a trial by jury and to due process under the Sixth and Fourteenth Amendments of the United States Constitution. While this case was pending on appeal, our California Supreme Court held that a juvenile adjudication may be used as a strike without violating those constitutional rights. (*People v. Nguyen* (2009) 46 Cal.4th 1007 (*Nguyen*).) We therefore affirm the judgment.

BACKGROUND¹

An amended information alleged that defendant committed two counts of first degree residential burglary (Pen. Code, § 459)² and two counts of receiving stolen property (§ 496, subd. (a)).³ The information also alleged that defendant had one prior juvenile adjudication of a serious or violent felony within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On August 5, 2008, defendant pled no contest to one count of receiving stolen property and to one count of first degree burglary. Defendant waived his right to a jury trial on his prior conviction. After a court trial, at which the People introduced (1) a copy of the petition filed under Welfare and Institutions Code section 602 alleging violations of section 211 (second degree robbery) and of section 487, subdivision (c) (grand theft person) and (2) the disposition showing that the petition was sustained as to the section

¹ Because the underlying facts of the offenses are not relevant, we only set forth the procedural background.

² All further undesignated statutory references are to the Penal Code.

³ The same crimes were alleged against a codefendant, Simon Sierra.

211 allegation, the court found the prior conviction allegation to be true. The court rejected defense counsel's argument that defendant's juvenile adjudication could not constitute a strike.

The trial court sentenced defendant to two years for first degree burglary, doubled to four years, plus a consecutive eight-month-term, doubled to sixteen months, based on the strike. His total sentence therefore is five years, four months.

DISCUSSION

Like defendant here, the complaint in *Nguyen* charged, in adult felony proceedings, that the defendant had previously sustained a juvenile adjudication which qualified as a prior felony conviction under the Three Strikes law. (*Nguyen, supra*, 46 Cal.4th at pp. 1010-1011.) *Nguyen* waived a jury trial on whether he had suffered that conviction and, after a court trial at which documentary evidence was presented establishing that a juvenile adjudication for aggravated assault had been entered against him, the trial court doubled *Nguyen*'s sentence.

Nguyen contends on appeal that use of the prior juvenile adjudication to enhance his maximum sentence was barred under *Apprendi v. New Jersey* (2000) 530 U.S. 466, because the prior juvenile proceeding did not afford him the right to a jury trial. *Apprendi* held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.) Our California Supreme Court in *Nguyen* interpreted *Apprendi* as requiring "at most, the right to a jury trial in the current criminal proceeding with respect to any sentencing fact that may increase the maximum punishment for the underlying conviction." (*Nguyen, supra*, 46 Cal.4th at p. 1012.) In other words, *Apprendi* requires only that defendant be afforded the right to a jury in the *current*, adult proceeding to determine the existence of the alleged prior adjudication. Because *Nguyen* did have the right to a jury trial at his adult felony proceeding to determine whether he suffered the prior juvenile adjudication, the court reasoned that *Apprendi* had not been violated.

The court rejected Nguyen’s contention that the lack of a jury trial right in the prior juvenile proceeding precluded all use of the resulting adjudication to enhance his sentence for his current offense. It said, “So long as an accused adult is accorded his or her right to a jury trial *in the adult proceeding* as to all facts that influence the maximum permissible sentence, no reason appears why a constitutionally reliable prior adjudication of criminality, obtained pursuant to *all procedural guarantees constitutionally due to the offender in the prior proceeding* – specifically including the right to proof beyond a reasonable doubt – should not also be among the facts available for that sentencing purpose.” (*Nguyen, supra*, 46 Cal.4th at p. 1023.)

Defendant here, like the defendant in *Nguyen*, was afforded the right to have a jury determine whether he suffered the prior juvenile adjudication. He waived the right. Under *Nguyen*, by which we are bound, defendant’s Sixth Amendment right to a jury trial and due process rights were not violated. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.